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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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13 COYNESS L. ENNIX JR., M.D.,

14 Plaintiff,

15 vs.

16 ALTA BATES SUMMIT MEDICAL
17 CENTER,

18 Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S MOTION IN LIMINE
NO. 1 TO EXCLUDE UNRELATED
PEER REVIEW EVIDENCE;
DECLARATION OF RACHEL
SATER**

**Trial Date: June 2, 2008
Dept: Ctrm. 9, 19th Floor
Judge: Hon. William H. Alsup**

21 Plaintiff Coyness L. Ennix, Jr. ("Dr. Ennix") moves to exclude evidence and argument
22 relating to Dr. Ennix's professional activities unrelated to the peer review of the ten cases at
23 issue in this lawsuit. Such evidence would include: (a) any documents or testimony regarding
24 ongoing peer review of Dr. Ennix at ABSMC; (b) any documents or testimony regarding Dr.
25 Ennix from hospitals other than ABSMC.

26 The sole issue in this case is whether race was a factor in ABSMC's peer review actions
27 against Dr. Ennix that nearly ruined his career as a cardiac surgeon. That peer review addressed
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ten cases and concluded by July 2006. In the peer review process at issue herein, ABSMC could not have considered cases or peer review of Dr. Ennix's occurring after that time or at a different hospital. Therefore, such evidence has no probative value regarding ABSMC's motivation or the veracity of its proffered justification of protecting "patient safety." Further, ABSMC's post-July 2006 peer review activities are inherently uncredible: they could suffer from (a) the same racial bias that Dr. Ennix believes tainted the peer review at issue; and (b) the additional impermissible motivation of retribution for filing this suit. If such evidence has any probative value, such minimal value is outweighed by the potential prejudice, confusion, and waste of time.

Therefore, the Court should exclude this extra-record evidence as irrelevant and uncredible.

STATEMENT OF FACTS

Dr. Ennix claims that ABSMC discriminated against him based on his race in violation of 42 U.S.C. § 1981 in a peer review that began in early 2005 and concluded in July 2006. In its initial disclosures, ABSMC stated that it would offer as proof "documents relating to the ongoing peer review of Plaintiff by the Summit Medical Staff from July 11, 2006 to the present." (See Sater Decl., ¶ 2, Exhibit A, at 14:13-14.) Additionally, during discovery, ABSMC subpoenaed documents regarding Dr. Ennix from Doctor's Hospital San Pablo, Valley Care Health Systems in Pleasanton, Highland Hospital in Oakland and San Ramon Medical Center—all hospitals where Dr. Ennix currently enjoys staff privileges. (See Sater Decl., ¶ 3, Exhibit B.) At the time of the challenged peer review, Dr. Ennix had staff privileges only at Alta Bates, Summit and Doctor's Hospital San Pablo. (Sater Decl., ¶ 4.) None of these documents was or could have been considered by ABSMC in the course of the challenged peer review process.

ARGUMENT

This Court should exclude all evidence and testimony regarding cases or peer reviews other than the ten cases reviewed in peer review at issue in this lawsuit. Evidence is admissible if it is probative as to a "fact of consequence" and its probative value is not "outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations

DECLARATION OF RACHEL J. SATER

I, Rachel J. Sater, declare:

1. I am an attorney licensed to practice law in the State of California and in this Court. I am an attorney at Moscone, Emblidge & Quadra, LLP, counsel of record for the Plaintiff.

2. Attached hereto as Exhibit A is a true and correct copy of relevant portions of ABSMC's initial disclosures in this case.

3. Attached hereto as Exhibit B are true and correct copies of four Subpoenas in a Civil Case served by ABSMC in this case.

4. As alleged in Paragraph 5 of the Complaint, during the time period relevant to this suit, Dr. Ennix held surgical privileges only at Summit Campus and Doctors Hospital San Pablo.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: April 29, 2008

/s/
Rachel J. Sater

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14 NORTHERN DISTRICT OF CALIFORNIA

15 COYNESS L. ENNIX, JR., M.D.,
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17 Plaintiff,

18 v.
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20 ALTA BATES SUMMIT MEDICAL CENTER,
21
22 Defendant.

CASE NO. C 07-2486 WHA

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION IN LIMINE
NO. 1 TO EXCLUDE UNRELATED
PEER REVIEW EVIDENCE**

DATE: May 19, 2008
TIME: 2:00 p.m.
DEPT: Ctrm. 9, 19th Floor
JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007
TRIAL DATE: June 2, 2008

1 Except for impeachment purposes, Defendant does not oppose the
2 exclusion of (1) evidence of ongoing peer review at ABSMC (i.e., adverse peer review
3 actions taken after July 11, 2006); and (2) of evidence regarding Dr. Ennix's poor
4 performance record at other medical institutions.

5 DATED: May 9, 2008

KAUFF MCCLAIN & MCGUIRE LLP

6
7 By: 
8 ALEX HERNAEZ

9 Attorneys for Defendant
10 ALTA BATES SUMMIT MEDICAL
11 CENTER
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